

MAINE REVENUE SERVICES

(FORMERLY BUREAU OF TAXATION)

SALES/EXCISE TAX DIVISION

RULE NO. 301

SALES FOR RESALE AND SALES OF PACKAGING MATERIALS

SUMMARY: Explains exemption pertaining to sales for resale and sales of packaging materials.

.01 Sales for Resale.

A. General. A sale of tangible personal property for resale (except for resale as a casual sale) is not a taxable transaction. However, the burden of proving that a sale of tangible personal property is for resale is upon the person making the sale. The seller will be relieved of this burden of proof only if a resale certificate in accordance with the provisions of this rule is obtained from the purchaser. Where the sale is to a person who, by reason of being a non-resident of the state not doing business within the state has no seller's registration certificate, the seller should obtain sufficient evidence to sustain the burden of proving the sale is actually for resale. If the purchaser cannot furnish such evidence, the seller should, as a protection, collect the sales tax.

B. Resale Certificate. Where the sale of tangible personal property is claimed to be non-taxable for purposes of resale, the purchaser shall furnish the seller with a certificate in substantially the form set forth below; and in the furnishing of the certificate, the purchaser shall be held solely accountable for the payment to the state of any taxes, together with interest and penalties thereon, that may later be determined to be due on such purchases.

RESALE CERTIFICATE

"I HEREBY CERTIFY: That I hold a valid seller's registration certificate No. _____ issued pursuant to the Sales and Use Tax Law, that I am engaged in the business of selling _____; that the tangible personal property described herein which I shall purchase from _____ will be resold by me in the form of tangible personal property; provided, however, that in the event any of such property is used for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, it is understood that I am required by the Sales and Use Tax Law to report and pay tax, measured by the purchase price of such property. Description of property to be purchased:

Purchaser _____

Address _____

Date _____ 19____ "

Under "Description of property to be purchased" there may appear:

- (1) Either an itemized list of the particular property to be purchased for resale, or
- (2) A general description of the kind of property to be purchased for resale. (A certificate thus describing the property is good until revoked in writing.)

This certificate may be used for the purpose of a single purchase of commodities for resale; in such case (1) above applies; or it may be used as a blanket certificate for the purpose of a continuing line of purchases of commodities for resale in the regular course of business; in the latter case (2) above applies, and the certificate should be marked "Blanket Certificate".

In no case should a seller sell tax exempt for resale, unless the purchaser specifies in his order, whether written or oral, that the goods are purchased for resale. Invoices of goods so sold must be appropriately marked or stamped to indicate that they are exempt purchases. The words "Maine Sales Tax Exempt, for Resale" will satisfy this requirement.

C. Acceptance of Resale Certificate by Seller. The certificate must be taken in good faith from a person engaged in selling tangible personal property who, at the time of purchase, intends to sell the property in the regular course of business or cannot then ascertain whether it will be sold or not.

The good faith of the seller will be questioned if he has knowledge of facts which give rise to a reasonable inference that the purchaser does not intend to resell the property, as, for example, knowledge that a purchaser of particular merchandise is not engaged in the business of selling that kind of merchandise.

.02 Packaging Materials

A. General. Non-taxable sales of packaging materials may be made in substantially the same manner as sales for resale, as explained in Section .01 of this rule. The sale of containers, boxes, crates, bags, cores, twines, tapes, bindings, wrappings, labels and other packing, packaging and shipping materials is not subject to tax when sale is to a person for use in packing, packaging and shipping tangible personal property sold by them or upon which they have performed the service of cleaning, pressing, dyeing, washing, repairing or reconditioning in the regular course of business, where such materials are not to be retained in the possession of the purchaser, but are to be transferred in due course to the possession of this customer.

B. Exemption Certificates.

1. **Registered Purchaser.** The seller of such materials to a registered retailer will be relieved of the burden of proving the sale was for a non-taxable purpose, as noted above, if he takes from his customer in good faith a resale certificate, as explained in Section .01, sub-section B of this rule, covering such packaging materials. This may be done even though title is not to pass to the ultimate consumer, as in the case of returnable containers.
2. **Unregistered Purchasers.** Where the sale is made to other than a registered retailer, as in the case of a sale of such materials to a service trade, a certificate in substantially the following form should be obtained by the seller of such materials:

" I HEREBY CERTIFY: That I am engaged in the business of _____ and am not required to register under the Sales and Use Tax Law; that the packaging materials which I shall purchase from _____ will be used by me to wrap or package tangible personal property upon which I have performed the service of cleaning, pressing, dyeing, washing, repairing or reconditioning in the regular course of business; and that such materials will in due course be transferred to the possession of my customers.

Purchaser _____
Address _____

Date _____ 19_____"

The foregoing certificate may be used as a blanket certificate to cover all subsequent purchases of such materials.

In no case should a seller sell such materials free of tax unless the purchaser specifies in his order, whether written or oral, that the materials are purchased for resale or as exempt packaging materials.

Invoices of goods so sold must be appropriately marked or stamped to indicate that they are exempt purchases. The words "Maine Sales Tax Exempt , for Resale" will satisfy this requirement.

.03 Misuse of Resale Certificate.

Purchases who avoid payment of tax through deliberate misuse of resale certificates will be subject to prosecution.

BASIS: Establishes a procedure for making sales exempt from sales tax for reasons of resale, or for reasons that the materials will be used for packaging materials pursuant to 36 M.R.S.A., Section 1752(11). The rule requires certification of such exempt sales.

AUTHORITY: 36 M.R.S.A., Sec. 1901

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